Supreme Court, U.S.
FILED
951463 MAR 13 1996
OFFICE OF THE CLERK

NO. _____

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1995

Harry E. Thomason, pro se
Petitioner

versus

PRINCE GEORGE'S COUNTY, MARYLAND
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

Harry E. Thomason
609 Cedar Avenue
Fort Washington,
Prince George's County,
Maryland 20744
Phone No. (301) 292-5122

66 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Maryland Court of Appeals erred in failing to grant certiorari and remand the cause for trial on the issues of discriminatory denial of the guarantees of the U.S. Constitution of equal protection of the laws and unlawful administrative search in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

2. Whether the ordinance adopted by the Prince George's County, Maryland government (CB-64-1993), that fails to provide that a County inspector in the field must obtain a search warrant before entering upon the premises of a home/dwelling, violates the safeguards of the Fourth and Fourteenth Amendments to the Constitution of the United States.

TABLE OF CONTENTS

PAGE

1. QUESTIONS PRESENTED FOR REVIEW.....i

2. STATEMENT OF THE CASE/FACTS.....1

3. ARGUMENT.....5

4. APPENDIX.....A-1 -52

5. PETITION FOR WRIT OF CERTIORARI.....11

TABLE OF CITED AUTHORITIES

1. Camara versus Municipal Court (387 U.S. 523, 87 Sup. Ct. 1727).....7, 9, 10

2. Norman SEE versus City of Seattle (387 U.S. 541, 87 Sup. Ct. 1737).....7, 9

3. Johnson versus United States (333 U.S. 10, 14, 68 Sup. Ct. 367,369, 92 L. Ed. 436).....10

JURISDICTION

The Court of Appeals of Maryland on December 15, 1995 denied Petitioner's request that certiorari be granted to the Court of Special Appeals of Maryland. (668 A2d 37)(A-1) This Court has jurisdiction of this case under TITLE 28 U.S. Case Section 1257(a) since a Maryland county ordinance is drawn in question on the ground of it being repugnant to the Fourth Amendment of the U.S. Constitution.

FOURTH AMENDMENT TO THE U.S. CONSTITUTION

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE/FACTS

1. A Prince George's County, Maryland law was amended by a Bill known as CB-64-1993. (Appendix A-11.) That amendment to the law prevented property owners/landlords from renting-out, and prevented tenants from renting one- and two-family dwellings unless a license fee of $75.00 was first paid and an inspection was made to ascertain that the premises were in compliance with all housing Code provisions. If a light bulb was burned out, the dwelling would not be in compliance with the Code and the inspector would issue

a citation, requiring replacement of the bulb before the dwelling would be certified as complying with the Code. The amended law requires a License before the dwelling can be occupied, and the License is denied until an inspector has gone onto the premises, and into every garage, living room, every bedroom, every closet, every bathroom, every dining and playroom, and searched for a burned out bulb, or other item that might not be up-to-code. CB-64-1993 does not include any provision requiring the inspector to obtain a valid search warrant before going into a private home.

2. CB-64-1993 does not apply to a dwelling that is rented under an ORAL lease. It does not apply to dwellings rented to many classes of landlord/tenants. A search WITHOUT A SEARCH WARRANT is permitted. (The Prince George's County Attorney promised the Court that no doors would be kicked down, during an Administrative Search, but did not tell the Court what measures the Defendant would take to get in.) (A-43.)

3. If the law (as amended) is not complied with, there is NO PENALTY. Only one class of owner is required to pay a penalty, that is, a new purchaser of a dwelling! So, there is unequal treatment under the law of owners/tenants under like circumstances.

4. The Defendant, Prince George's County, submitted a Motion to the Circuit Court seeking to have the present case dismissed. That motion was denied and the case went on. The Defendant submitted a second Motion, seeking to have

this case dismissed. That motion was also denied, and the case went on.

5. The Plaintiff/your Petitioner, asked the Court for relief and that request was granted. The Court "verbally ordered" the County that Mr. Thomason's properties "be exempt from CB-64-1993 pending this lawsuit". (A-50) That was February 25, 1994. The Plaintiff prepared and filed a list of the 14 properties he rents out and filed it in this case February 28, 1994. (A-51)

6. The Defendant/Prince George's County passed another amendment to the law, CB-119-1994. It exempted other classes of landlord/tenants. Unlike treatment of CB-64-1993, which was unsigned by Chief executive Parris Glendening, and had 4 out of 9 County Council members in opposition, the second amendment was unopposed. (No opposition to exempting another class of landlord/tenant.)

7. CB-64-1993 targeted some single-family rental dwellings only. It does not cover most single-family dwellings. If CB-64-1993 is urged as making single-family dwellings safer, by protecting them from burned-out light bulbs or such, then there should be equal protection under the U.S. Constitution and all single-family dwellings should be equally protected. CB-64-1993 does not provide for such equal protection. Further, most of those in single-family dwellings do not have to pay $75.00. So, there is unequal-taxation under CB-64-1993.

8. The Defendant, Prince George's County, requested a hearing and it took place April 29, 1994. (A-39.) During that hearing the Attorney for the Defendant admitted that Administrative Searches may be necessary. But he promised that "no doors are going to get kicked down under this law." (A-43.) And so, the Court held that "the ordinance is constitutional, and, accordingly grants the Defendant's motion to dismiss." Under Rule 2-522 (a) the Plaintiff filed a request for a "brief statement of the reasons for the decision". (A-45.) The Court did not respond.

9. Despite the Court Order that exempted the Plaintiff's properties and his tenants, the Defendant began to threaten the Plaintiff. That was October 3, 1994. Such threats are continuing, the latest VIOLATION letter was dated January 20, 1996. The Defendant stated: "FAILURE TO COMPLY FULLY WITH THIS NOTICE WILL MAKE IT NECESSARY TO TAKE ACTION IN ACCORDANCE WITH THE PROVISIONS OF THE LAW." And further: "FAILURE TO COMPLY WITH THIS NOTICE MAY RESULT IN THE REFERENCED PREMISES BEING POSTED UNFIT FOR HUMAN HABITATION AND ORDERED VACATED." The Defendant is demanding $75.00 for each property, plus 20% penalty for each month the property is operated without a license. Thus, the Defendant is violating the Court's direct Order as to these properties, which are exempt. And, the Defendant is attempting to collect "an additional 20% penalty" for each month, despite the fact that none of these properties is a new purchase!

10. The Plaintiff, your Petitioner filed an Appeal to the Maryland Court of Special Appeals, No. 1041. That Court affirmed the Circuit Court's dismissal of the Complaint. The Plaintiff filed a Petition for Certiorari to the Maryland Court of Appeals (our Supreme Court). The Defendant did not respond to the Petition for certiorari. (See Plaintiff's Petition Docket No. 395.)

11. The Circuit Court exempted my properties from the provisions of CB-64-1993 pending this lawsuit as stated above, and yet there have been damages which include hundreds of dollars I paid to an attorney who assisted me since 1993. If the Supreme Court should strike down the law before us, that would end the problems it has generated for tenants in their homes, for landlords, for property-owners, and for me.

ARGUMENT

1. The law(s) of Prince George's County, Maryland were changed by County Bill CB-64-1993. Those changes to the law(s) were so bad that 4 out of 9 County Council members voted against the Bill. And, the Chief Executive of our County, Parris Glendening (now Governor of Maryland) did not sign CB-64-1993 into law. (A-19.) "The County Executive having failed to return this Bill within ten (10) days after the date of its presentation to him with either his approval or veto, the Bill became law on September 29, 1993." "To become effective November 15, 1993." That showed that only 5 out of 10 of our lawmakers were for the changed law, CB-64-1993.

2. The present lawsuit was filed December 17, 1993, Counts 1, 2, 3, and 4. (A-20.) An Amendment of the Complaint was filed 4 days later containing Counts 5, 6, and 7. (A-32) The Plaintiff, your Petitioner, sought a DECLARATORY JUDGMENT that the Prince George's County Bill, CB-64-1993, was unlawful and unenforceable. (A-24.) Your Petitioner, the Plaintiff, "hereby asks the Court to issue a temporary Injunction to prohibit the Defendant from enforcing CB-64-1993---." (A-36) On February 25, 1994 the Prince George's County Circuit Court verbally ordered the County Attorney that Mr. Thomason's property be exempt from CB-64-1993 pending this lawsuit.

3. The Defendant's inspectors began to selectively enforce the changed law. While enforcing it against some property owners/landlords/tenants, they exempted others. Then our County Council quickly passed another law-change. (CB-119-1994.) It exempted even more property owners/landlords/tenants. Those laws were challenged in this lawsuit but were vigorously defended by the Defendant's Office of Law of Prince George's County.

4. Two Motions were filed by the Defendant in attempts to get this lawsuit dismissed. Both Motions were denied, and the case went on.

5. CB-64-1993 does not provide for any fine or penalties, except for that small number of NEW-PURCHASERS! The vast majority of those that the Defendant went after were old-time property owners/landlords/tenants, some that had rented

for 10 to 20 years. Consequently, the Defendant has been making mischief by using CB-64-1993 to extract $75.00 and then threatening to impose a 20% penalty for each month that there is non-compliance with CB-64-1993 and CB-119-1994. Even though the Plaintiff's properties are exempt from the changed laws, by Court Order, the Defendant threatened me by letter dated January 20, 1996. I was ordered to comply by February 26, 1996, or face penalties. On March 1, 1996 the Inspectors Supervisor told me I will be prosecuted.

6. Our United States Supreme Court firmly struck down a law that was similar to the Prince George's County law, as changed by the two Bills. In Camara versus Municipal Court, all of the California Courts failed to give relief to Camara. (387 U.S. 523, 87 Sup. Ct. 1727:1967) At issue was Camara violating the housing code by refusing to permit an inspector to enter to search, without a search warrant. Also, the Supreme Court took action on behalf of a victim (SEE versus City of Seattle, Washington, 387 U.S. 541, 87 Sup. Ct. 1737.) The Fire Chief demanded that the owner allow him to inspect, without a search warrant. This Court held that a business-man, like an occupant of a house, has a Constitutional right to go about his business free from unreasonable official entries upon his property. The Court concluded that administrative-entry may only be compelled "within the framework of a warrant procedure."

7. Your Petitioner (Plaintiff) asserted there must be no search without a search warrant in the Complaint of this case;

"No search without a search warrant", and also lack of due process of law, discrimination, invasion of privacy and other shortcomings of CB-64-1993 were brought out in the Complaint.

8. In the present case, a field-inspector, Stephen Turney, threatened to post the premises as "UNFIT FOR HUMAN HABITATION AND ORDERED VACATED." That threat was made despite the Court Order that exempted the premises, and despite the facts that the premises were in excellent condition, and have been that way for more than 14 years, continuously occupied by a Metropolitan policeman and his wife. Making mischief like that has been forbidden by our Supreme Court. (The Plaintiff's old-time tenant has told the Plaintiff over and over again that no inspector will be allowed to enter the premises without a valid search warrant.)

9. This is not a lone case of a field-inspector making mischief under CB-64-1993. In another case, two different field inspectors went after the property owner, partly because he refused to pay the public utility bills for his tenant. Thus, the Defendant's inspectors turned CB-64-1993 into an agency to help the electric power company, and the water company, collect their bills! And, also to interfere with the rental agreement between the landlord and tenant, which provides that the tenant must pay for the electricity and water he uses. That landlord has been forced to hire a lawyer to defend him, despite the Supreme Court's holding that "The businessman, like the occupant of a residence, has a constitutional right to

go about his business free from unreasonable entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by warrant."

10. In Plaintiff's Petition to our Court of Appeals, it was urged that the controlling case is Camara versus Municipal Court wherein the Supreme Court held that a search warrant is required to assure protection of the constitutional rights of those in the home and the property owners. Samples of quotes from the Supreme Court are: "— we therefore conclude that appellant had a constitutional right to insist that the inspectors obtain a warrant to search—". (387 U.S. 523, 87 Sup. Ct. 1727:1967) In a companion case the Supreme Court broadened the applicability of no search without a warrant. (SEE versus the City of Seattle, 387 U.S. 541, 87 Sup. Ct. 1737.) In SEE the Court stated: "— a search of private property is "unreasonable" unless it has been authorized by a valid search warrant." Not even the fire chief could go in and search, our Supreme Court held!

11. CB-64-1993 does not provide constitutional safeguards as required by the Supreme Court in Camara and SEE. In the Complaint in the present case, the Plaintiff pointed out DISCRIMINATION against some Citizens, (A-20), INVASION OF PRIVACY prohibited by the Fourth Amendment to the Constitution by unreasonable searches, (A-21), CONCEAL-

MENT; LACK OF EQUAL PROTECTION UNDER THE LAW, and; LACK OF DUE PROCESS of LAW. (A-33 to A-35)

12. The Circuit Court for Prince George's County erred in holding that "the ordinance is constitutional—". (A-44) And, the Court of Special Appeals erred in failing to reverse the Circuit Court. (A-9,10) And then, the Court of Appeals erred in failing to remand the cause to the Court of Special Appeals, with instructions. (A-1)

13. The Supreme Court explained, in Johnson versus the United States, 333 U.S. 10, 14, 68, S.C. 367, 369, 92 L.Ed. 436, quote: "The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." (Set out in Camara versus Municipal Court, 387 U.S. 530, page 1731.)

14. All of the Maryland courts have declined to grant relief from the inspectors operating unlawfully under CB-64-1993. Now I ask that our Supreme Court grant relief and certify there is probable jurisdiction.

15. On December 15, 1995 the Maryland Court of Appeals denied the Petition for Writ of Certiorari filed by your Petitioner.

PETITION FOR WRIT OF CERTIORARI

Wherefore, your petitioner Harry E. Thomason respectfully prays that the United States Supreme Court certify that there is probable jurisdiction.

Harry E. Thomason, pro se
609 Cedar Avenue
Fort Washington
Prince George's County
Maryland 20744
Phone No. (301) 292-5122

(I am a member of the Bars of Maryland and of this Court.)

APPENDIX

HARRY E. THOMASON	*	In the
	*	Court of Appeals
V.	*	of Maryland
	*	Petition Docket No. 395, Sept. Term 1995
PRINCE GEORGE'S COUNTY MARYLAND	*	(No. 1041, Sept. Term 1994, Court of Special Appeals

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT O. MURPHY
Chief Judge

Date: December 15, 1995

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1041

September Term, 1994

Harry E. Thomason

v.

Prince George's County, Maryland

Fischer,

Cathell,

Murphy,

JJ.

Per Curiam

Filed: June 26, 1995

#CAE93-22747

Appellant, Harry E. Thomason, appeals from a grant by the Circuit Court for Prince George's County (Perry, J.) of a motion to dismiss an amended complaint that appellant had filed against appellee, Prince George's County, Maryland.

Appellant contends that the circuit court erred in finding that certain legislation enacted by Prince George's County Council, referenced as CB-64-1993, is constitutional. CB-64-1993 requires that owners of multifamily rental facilities of three or more units and single-family rental facilities obtain a two year license for their rental facilities from Department of Environmental Resources for Prince George's County. The statute provides exclusions from its licensing requirement for several groups of individuals. The circuit court's determination that the legislation is constitutional resulted in its decision to dismiss appellant's amended complaint. Appellant advances several reasons for his argument that the legislation was unconstitutional, and we will address these contentions throughout this opinion.

Facts

On December 17, 1993, Thomason filed a complaint against Prince George's County, alleging that legislation the county had enacted violated the Fourteenth Amendment of the United States Constitution and Article 26 of the Maryland Const'tution. Thomason sought a declaratory judgement that Prince George's County Bill, number CB-64-1993 (hereinafter CB-64-1993) was discriminatory and unenforceable. CB-64-1993

On January 21, 1994, appellee filed a motion to dismiss the original complaint. On January 24, 1994, Thomason filed an amended complaint alleging further constitutional violations in the enactment of the bill. The amended complaint requested a temporary injunction of enforcement of CB-64-1993 in addition to the declaratory judgement requested in the original complaint. On February 1, 1994, Thomason filed a motion requesting an injunction and a declaratory judgement. On February 8, 1993, appellee filed a motion to dismiss the amended complaint. The motion asserted that Thomason failed to demonstrate in his pleading a rational basis for invalidating CB-64-1993.

On February 15, 1994, the circuit court denied appellee's motion to dismiss the original complaint. On April 29, 1994, the circuit court conducted a hearing on appellee's motion to dismiss Thomason's amended complaint. After oral arguments by both parties, the circuit court reviewed the pleading and determined that CB-64-1993 was constitutional. The circuit court began its analysis of the statute by noting that laws enacted by the legislature in Maryland are presumed by the courts to be constitutional. The court concluded that the statue was within the broad police powers of the government. Consequently, the court granted appellee's motion to dismiss the amended complaint. On May 25, 1994, Thomason filed a notice of appeal for review of the circuit court's dismissal of his amended complaint.

Discussion

Under Maryland Rule 2-322(b), the defendant, before filing his

or her answer, may file a motion to dismiss for failure to state a claim upon which relief can be granted. As the circuit court addresses the motion, "the court may dismiss the action or grant such lesser or different relief as may be appropriate." Md.Rule 2-322(c). In its evaluation of the motion, the trial court "must assume the truth of all well pleaded facts and all inferences that con be reasonably drawn from those pleadings." ***Hrehorovich v. Harbor Hospital***, 93 Md. App. 772, 781 (1992), *cert. denied*, 330 Md. 319, (1993). This court has stated, "The appropriate standard of review of a grant or denial of a motion to dismiss is whether the well-pleaded allegations of fact contained in the complaint, taken as true, reveal any set of acts that would support the claim made." ***Taffiin v. Levitt***, 92 Md. App. 375, 379, *cert. denied*, 328 Md. 447 (1992).

In this case, we must determine whether the pleadings support a claim that CB-64-1993 violates the equal protection clause of the United States Constitution or Maryland Declaration of Rights. Section I of the Fourteenth Amendment of the United States Constitution provides in part, "No State shall...deny to any person within the equal protection of the laws." The Maryland Constitution does not contain an equal protection clause but the Court of Appeals has consistently held that equal protection is guaranteed by the due process clause of Article 24 of the Maryland Declaration of Rights.[1] ***See Kirsch v. Prince George's County***, 331 Md. 89, 96, *cert. denied*, 114 S.Ct. 600 (1993); ***Murphy v. Edmonds***, 325 Md. 342, 353 (1992); ***Hargrove v.***

Board of Trustees, 310 Md. 406, 416 (1987), *cert. denied*, 484 U.S. 1027 (1988). The Court of Appeals has consistently stated that the Maryland equal protection principle applies in the same manner and to an equal extent as the Equal Protection Clause of the Fourteenth Amendment. ***Attorney General v. Waldron***, 298 Md. 683, 704-705 (1981). As the equal protection guarantees are applied in an identical manner, Supreme Court opinions concerning equal protection under the Fourteenth Amendment are of equal validity to an equal protection analysis under Article 24. ***Waldron***, 289 Md. at 705.

Our first step in an equal protection analysis is to discern the standard to use in evaluating the legislation. As appellant does not claim that this legislation burdens a 'suspect class' or impinges on a 'fundamental right', this statute would not be evaluated under a strict scrutiny analysis. ***Broadwater v. State***, 306 Md. 597, 603 (1986) (citations omitted). ***See, e.g., Graham v. Richardson***, 403 U.S. 365, 372 (1971) ("classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny"); ***Shapiro v. Thompson***, 394 U.S. 618, 634 (1969) (any classification that penalizes the right to interstate travel must be shown to promote a compelling government interest, or be found unconstitutional); ***Kramer v. Union Free School District***, 395 U.S. 621, 627 (1969) (classification that burdens the constitutional right to vote is examined with strict scrutiny).

This statute would also not receive the heightened

scrutiny of classifications based on gender, discrimination against illegitimate children, a classification involving children of illegal aliens with regard to public education, or a classification which denies individuals the right to work in the profession for which they are qualified and licensed. ***Edmonds***, 325 Md. at 357 (citations omitted). Instead, the classifications used by CB-64-1993 in requiring licensing are evaluated under the 'rational basis' test. The Court of Appeals explained that under this rational basis standard:

> [A] court 'will not overturn' the classification 'unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the [governmental] actions were irrational.' A statutory classification reviewed under the rational basis standard enjoys a strong presumption of constitutionality and will be invalidated only if the classification is clearly arbitrary."

Kirsch, 331 Md. at 98 (citations omitted). Finally, the Court of Appeals has stated that a party claiming a denial of equal protection of the laws must show that his or her situation is the same as another situation, and "that the State, or its instrumentalities, has treated the two situations differently in an unreasonable or arbitrary manner." ***Queen Anne's County v. Miles***, 246 Md. 355, 378 (1967).

Under CB-64-1993, the Department of Environmental Resources for Prince George's County requires that owners of multifamily rental facilities of three or more units and single-family rental facilities obtain a license for their rental facilities.

The license would last for two years in duration. The statute excludes form its definition of multifamily rental and single-family rental facilities "any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, or any other facilities operated for religious or eleemosynary purposes." CB-64-1993, § 13-138(a) (9), (a)(12).[2] The statute is restricted to rental arrangements that are encapsulated in a written lease agreement. Finally, no license is required:

> (c)...for a single-family rental facility in any of the following circumstances:
>
> (1) If the tenant is the landlord's parent, son daughter, or in-law;
>
> (2) If the landlord is an active member of any branch of the United States Armed Forces, Diplomatic Corps or Foreign Service, who maintains the subject property as her or his domicile and permanent residence; or
>
> (3) If the landlord has been relocated for employment or education, maintains the subject property as her or his domicile and permanent residence, and the subject property has not been leased for more than two (2) consecutive years.

§ 13-181(c).

The legal owner of any property governed by the statute must apply for the license by filing an application and paying the applicable fee. § 13-181(a). The application must contain such information as to ensure compliance with the entire Housing Code. § 13-182(a). The property owner has

a continuing obligation to update the information provided on the application. § 13-182(a). The statute also dictates that "[n]o license for a single family rental facility will be granted until the premises meets the minimum standards of the County Code." § 13-182(b).

Appellant claims that this legislation violates equal protection by its requirements that only certain classes of single family residents must receive licenses. Thomason claims that the statute improperly differentiates between landlord-tenant relationships that have an oral lease and those governed by a written lease agreement. Thomason also claim that the exemptions from the licensing requirement for family members, and members of the armed services and the diplomatic corps grant improper benefits to these groups.

After reviewing the statute as a whole, we cannot find a violation of the equal protection clause. The purpose of the statute is to increase compliance with the state housing code. The legislation concerns a matter of public health and safety. As the circuit court noted, this type of legislation is well within the police powers of the state. As for the portion of the statute that exempts certain groups from the licensing requirement, we cannot find that the exemptions are 'irrational' or 'clearly arbitrary'. Each of the exemptions are for groups who are largely absent from the properties, such as diplomatic corps members, or who are generally considered short-term tenants, such as family members, or tenants operating under an oral lease. These exemptions rationally advance the purposes of the statute. The circuit court

correctly found CB-64-1993 to be constitutional.

Thomason also claims that the statute violates the Fourth Amendment's ban on unlawful searches. At the hearing for the motion to dismiss, the state conceded that, occasionally, under CB-64-1993, the Building Inspection Division may have to seek periodic and very limited administrative searches to assure compliance with the state housing code. These infrequent searches do not constitute a serious imposition of the liberty or property of the citizens affected and they are clearly within the broad police powers of the state.

After reviewing the allegations of fact contained int he Thomason's complaint, we cannot find any set of facts that would support a claim that CB-64-1993 is unconstitutional. The circuit court properly granted appellee's motion to dismiss.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

---

[1] Article 24 of the Declaration of Rights provides as follows:

"Article 24. Due Process.

"That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

[2] All statutory references are to Prince George's County Bill CB-64-1993, unless otherwise noted.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY,
MARYLAND

Legislative Session 1993

Bill No. CB-64-1993

Chapter No. 68

Proposed and Presented by Council Member Del Giudice

Introduced by Council Members Del Giudice and Bell

Co-Sponsors

Date of Introduction July 6, 1993

BILL

AN ACT concerning

Landlord - Tenant Regulations

For the purpose of requiring licensing of one- and two-family dwellings which are rented by the owner; and deleting certain obsolete language.

BY repealing and reenacting with amendments:

SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.

Sections 13-137,

13-138,

13-181,

13-182,

13-182.01,

13-186, and

13-189,

The Prince George's County Code

(1991 Edition, 1992 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 13-137, 13-138, 13-181, 13-182, 13-182.01, 13-186 and 13-189 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.

DIVISION 3. LANDLORD-TENANT REGULATIONS.

Subdivision 1. General Provisions.

Sec. 13-137. Applicability of Article.

Subject to any Public General State Laws to the contrary, including, but not limited to, the Real Property Article of the Annotated Code of Maryland, this Division shall regulate and determine legal rights, remedies and obligations of the parties and the beneficiaries of any lease agreement, concerning any multifamily rental facility consisting of a building containing three (3) or more rental dwelling units within this County or any single-family rental facility consisting of a building containing one (1) or more rental dwelling units. Any lease agreement entered into after July 1, 1973 shall be unenforceable hereunder insofar as the agreement or any provision thereof conflicts with any provision of this Division. Such unenforcability shall not affect other provisions of the agreement which can be given effect without such unenforceable provision. The provisions of this Division shall apply to all subsequent terms of leases, which terms commence after July 1, 1973.

Sec. 13-138. Definitions.

(a) For the purposes of this Division (and Division 4):

(1) Affected Tenant shall mean any tenant whose health, safety, or welfare is, or reasonably may be, impaired by a defective tenancy.

(2) Bona fide complaint, response, or effort shall mean a complaint or response or effort made in good faith regarding alleged violations of this Division.

(3) Days shall mean calendar days unless otherwise specified.

(4) Defective Tenancy shall mean any condition in a single-family rental facility or a multifamily rental facility or matter related to its maintenance, use, or occupancy which constitutes a violation of the terms of the lease or any provision of this Division, or constitutes a violation of any applicable Federal, State, County, or municipal law, regulation, or code reasonably related to the maintenance, use, or occupancy of the single-family rental facility or the multifamily rental facility.

(5) Director shall mean the Director of the County Department of Environmental Resources or [his] designee.

(6) Dwelling Unit shall mean one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities as defined by the County Housing Code.

(7) Landlord shall mean the legal and equitable owners(s) of a property or any portion thereof, used or to be used as a single-family rental facility or a multifamily rental facility and shall include, without limitation, a mortgagee,

vendee, contract purchaser, assignee of rents, receiver, trustee, executor, personal representative, lessee or any person, firm, or corporation who manages the multifamily rental facility by contractual agreement with the owner.

(8) Lease shall mean any written agreement which established or modifies the terms, conditions, rules, regulations, or any other provisions concerning the maintenance, use, and occupancy of a rental dwelling unit.

(9) Multifamily Rental Facility shall mean any building, structure, or combination of related buildings, structures, and appurtenances, operated as a single entity or a condominium, in which the landlord provides for a consideration three (3) or more rental dwelling units; but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, and any other facilities operated for religious or eleemosynary purposes.

(10) Notice shall mean a written notice unless otherwise specified.

(11) Tenant shall mean any person who occupies a rental dwelling unit for living or dwelling purposes.

(12) Single-Family Rental Facility shall mean any building, structure, or combination of related buildings, structures, and appurtenances operated as a single entity or a condominium, in which the landlord provides, for a consideration, one or more rental dwelling units not licensable under the Multifamily Rental Facility provisions, but shall not be construed to mean any transient facilities such as boarding

houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, or any other facilities operated for religious or eleemosynary purposes.

DIVISION 4. RENTAL HOUSING

Sec. 13-181. License required.

(a) No person shall conduct or operate or cause to be operated either as owner, lessee, agent or in any other capacity within the County any single-family rental facility or any multifamily rental facility as defined in Section 13-138(a)[(11)] without having first obtained a license as provided in this Division. By December 31, 1993, the legal owner of record of each single-family rental facility shall apply with applicable fee to the Director for a license to operate. Notwithstanding the above, any single-family rental facility that has a valid application pending may continue to operate without a license until its issuance or denial is established within this Division.

(b) Implementation of this Division shall be established by procedures adopted by the Director.

(c) Notwithstanding the provisions of Subsection (a), above, no license shall be required for a single-family rental facility in any of the following circumstances:

(1) If the tenant is the landlord's parent, son, daughter, sibling, or in-law;

(2) If the landlord is an active member of any branch of the United States Armed Forces, Diplomatic Corps or Foreign Service, who maintains the subject property

as her or his domicile and permanent residence; or

(3) If the landlord has been relocated for employment or education, maintains the subject property as her or his domicile and permanent residence, and the subject property has not been leased for more than two (2) consecutive years.

Sec. 13-182. License application; existing or new premises.

(a) The legal owner of record of each existing single-family rental facility or any multifamily rental facility shall make written application to the Director for a license for such use, on a form to be supplied by the Director and containing such information as necessary to administer and enforce the provisions of, and to insure compliance with the provisions of this Division, and the Housing Code in its entirety. Such information shall include, but shall not be limited to, the name and address of the owner's mortgage holder. There shall be a continuing obligation on the part of the license holder to update the information on [his] the application and/or to supply information not previously submitted. In addition, the legal owner of record of each such multifamily rental facility newly constructed [after July 1, 1973,] shall make written application to the Director for a license, as herein provided, prior to any initial occupancy.

(b) No license for a single-family rental facility will be granted until the premises meets the minimum standards of the County Code.

Sec. 13-182-01. Notwithstanding any other provision of this Division, any property which is [subdivided under the

Horizontal Property Act, Title 11 of the Real Property Article of the Annotated Code of Maryland,] located within an incorporated municipality which issues single-family rental facility licenses under its own Housing Code after an inspection to ascertain compliance thereto, is hereby exempted from the single-family licensing requirement of this Division [provided that the Council of Owners of condominium project ANNUALLY certifies to the Department of Environmental Resources that no less than fifty-one percent (51%) of all of the condominium units located on said property are owner occupied].

Sec. 13-186. Termination of license on change of ownership; procedures for a new license; penalties for failure to apply; term of license.

(a) A license issued under this Division is not transferable and terminates upon change of ownership.

(b) The purchaser of a licensed single-family or multifamily rental facility may conduct/operate the property provided an application for a new license is submitted to the Director prior to actual change of ownership or control of the property or its assets. In addition to other required information, a purchaser's application for a license must be accompanied by a certification of the date transfer is to take place.

(c) If a purchaser fails to apply for a new license as required in Subsection (b) of this Section, a [penalty] late fee of an additional twenty percent (20%) of the prorated licensing fee due for each month, or portion thereof, the

[project] single-family or multifamily rental facility was operated and/or occupied without a valid license will be assessed.

(d) The term for a new license shall begin on the date the application with appropriate fee was received by the Director.

(e) The term for the initial single-family rental facility license shall begin on the date the license was issued by the Director.

Sec. 13-189. Schedule of fees; refunds; review of fees.

(a) At the time of application for the initial license or for license renewal, the Director shall collect a license and inspection fee of Fifty Dollars ($50.00) for a multifamily rental facility for each dwelling unit, and seventy-five ($75.00) for a single-family rental facility for each dwelling unit. The license shall be for a two (2) year period.

* * * * * * *

(c) The schedule of fees shall be subject to review and revision periodically as experience dictates to insure that the fees are equitable and in line with costs of administration of this Division. The fees for single-family rental facilities shall only be amended by Council Resolution.

SECTION 2. BE IT FURTHER ENACTED that it is the intent of the County Council that the revenues generated by the issuance of single-family rental facility licenses be utilized to facilitate the County in the implementation and operation of the single-family rental facility licensing program and related Landlord-Tenant information, referral and mediation services.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this 7th day of September, 1993.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

BY: _____

Hilda R. Pemberton

Chairwoman

ATTEST:

_____

Joyce T. Sweeney

Clerk of the Council

APPROVED:

DATE: _____ BY: _____

Parris N. Glendening

County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

The County Executive having failed to return this Bill within ten (10) days after the date of its presentation to him with either his approval or veto the Bill became law on September 29, 1993.

To become effective November 15, 1993

IN THE CIRCUIT COURT FOR

PRINCE GEORGE'S COUNTY, MARYLAND

HARRY E. THOMASON)
609 Cedar Avenue)
Fort Washington, Maryland 20744)
PLAINTIFF, pro se)
vs.)
PRINCE GEORGE'S COUNTY,)
MARYLAND) EQUITY NO. _____
DEFENDANT) Filed Dec 17 1993
(Serve: the County Attorney)
Rm 5121 County Administration Bldg)
Upper Marlboro, Maryland 20772)

COMPLAINT

A SPEEDY HEARING IN THIS CASE IS REQUESTED, under the Annotated Code of Maryland, Courts and Judicial Proceding Article 3-409(e). A DECLARATORY JUDGEMENT AGAINST the DEFENDANT is REQUESTED (under Section 3-401).

COUNT 1 — DISCRIMINATION

1. By passing County Bill CB-64-1993 the Prince George's County COUNCIL unlawfully enacted this BILL, quote: "For the purpose of requiring licensing of one- and two-family dwellings which are rented by the owner —." That BILL is an ACT of discrimination. Houses that are rented by anyone other than the owner are not covered! More on that later.

COUNT 2 --- FURTHER DISCRIMINATION

1. In DIVISION 4 of this BILL, Section 13-181(c), any person who is a son, or a daughter, or a sibling, or even an in-law is free to rent, as a Tenant without a License being required. OR, if the Landlord is an active member of any branch of the U.S. Armed Forces, Diplomatic Corps or Foreign Service - - - no License is required. (Is it not possible that they have dirty properties that are not up to Code? Why are they exempt?) OR, exempted from this BILL if a Landlord has been relocated "for employment or education, - - -." That provision is so indefinite as to be almost meaningless —).

2. Also, under Section 13-182.01(a), other EXEMPTIONS are provided for.

3. Why should all of those classes of Landlords and Tenants be exempted from the provisions of this BILL while other Landlords and Tenants are subjected to this BILL, and are discriminated against?

COUNT 3 --- FURTHER DISCRIMINATION against some Citizens, and INVASION OF PRIVACY

1. Under the Fourth Amendment of the CONSTITUTION of the UNITED STATES of AMERICA, ARTICLE IV, quote: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." But, under CB-64-1993 of

this bad BILL, Section 13-182(b); no license for a single-family rental facility will be granted until the premises meets the minimum standards of the County Code.

2. Why should Landlords and Tenants, many with excellently-maintained properties, be subjected to this law while neighbors who are buying their homes are free of it, even if their properties are in bad condition and not up to Code? — clearly discriminatory!

3. Tenants have told me they will not allow an Inspector into their home. Clearly the U.S. Constitution supports their right "against unreasonable searches", especially because such searches do not apply to the Tenants' neighbors. Discrimination against Tenants, without similar treatment for those who do not rent, is unlawful. This, in addition to EXEMPTIONS discussed above, spell-out discrimination in addition to invasion of privacy and unlawful searches.

4. Searches that would ensue if this bad law were not stricken-down by the Court would fly-in-the-face of the Constitution of the State of Maryland. Our State Constitution recognizes that the Constitution of the United States is dominant (Declaration of Rights, Article 3), and, in Article 26, quote: "That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive, and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted." This BILL would require a search of the Tenant's home in order to

determine whether to issue a License, or to revoke a License.

5. To put this into perspective, a person owning or buying a home never has to fear an Inspector coming into the home to search for some housing code violation, or for the Inspector to determine whether "the premises meets the minimum standards of the County Code." But if it is a rental house, from Section 13-182(b), quote: "No license for a single-family rental facility will be granted until the premises meets the minimum standards of the County Code."!

6. Thus, the Tenant that refuses to allow the Inspector to enter the premises for an inspection would cause the Landlord's License to be denied (or revoked). A Tenant could thereby cause havoc, and remain in possession for a long period of time. Quickly, some Tenants would seize on that scheme to prevent the landlord from collecting rent. The Landlord and Tenant Court would be presented with a serious question of whether to order the Tenant evicted, or to deny the rent due the Landlord because the premises was not Licensed — not Licensed because the Tenant refused entry of the Inspector!

COUNT 4 — UNLAWFUL TERMINATION

1. Section 13-186(a) provides that a License, quote: "terminates upon change of ownership." WHY? This BILL purports to be needed because rental houses may not be up to the minimum standards of the County Code. Just suppose a rental house is up to those minimum standards and Licensed today, and then is sold today. Why is the License of today no longer valid?

2. That very provision lets the Court see behind the facade. This is not a BILL to ferret-out rental houses and bring them up to minimum standards of our County Code. It is a BILL to waste Inspectors' resources, tax property owners of rental dwellings, and spend — yes, WASTE, TAX and SPEND mentality of (only) half of our Politicians/Governance who voted for the BILL. Half of our Politicians/Governance did not vote for that BILL (our County Executive did not even sign CB-64-1993).

RELIEF SOUGHT

Plaintiff requests a DECLARATORY JUDGEMENT that the Prince George's County BILL, CB-64-1993 is unlawful and unenforceable. A SPEEDY HEARING on this matter is requested.

REMARKS

1. This is such bad law that the Prince George's County's Chief Executive would not sign it, quote: "The County Executive having failed to return this BILL within ten (10) days of its presentation to him with either his approval or veto, the Bill became law on September 29, 1993." ("To become effective November 15, 1993".)

2. This is such bad law that four (4) Council Members voted against it.

3. When we consider our "Governance" (9 Council Members and our County Executive), Prince George's County, ten (10) persons, only half of them voted for this BILL. Half did not vote for it. The Judge will now cast the deciding vote.

4. In order to give the Judge a MENU to choose from, I have set-out several reasons (Counts) for a Declaratory Judgement that the BILL is unlawful. His or Her Honor can pick-and-choose. Even if he or she likes only one of the reasons on the "menu", the BILL is fatally-flawed. The BILL will be stricken-down and our rights will be protected. If he or she likes all of the reasons, and so-rules, our lawmakers will become better educated as to what they can do, and what they cannot do.

5. Those five bad Politicians already have legal-recourse to correct the situation when a Tenant is bad (badder than the law allows). They can go to His or Her Honor and get a legal Search Warrant. Then they can legally-invade the Tenant's home and search it to see whether the Tenant is failing to keep the home up to the minimum property standards. (Sometimes it is the Tenant that causes the problem.) Similarly a good Judge will "haul" a bad Landlord into Court whenever he or she gets "way out" by failing to keep his/her property in good condition.

6. On a personal note, one of my former Tenants executed on Affidavit praising me as the best Landlord she had ever had.

7. Another Tenant, a Metropolitan Policeman who has rented from me for more than ten (10) years, <u>asked me</u> to prepare for him a letter that he would sign, which would be highly-complimentary of me as a Landlord. He has told me, <u>several times</u>, quote: Dr. Thomason, you have been like a father to me."

8. Another Tenant is a Detective for the State of Maryland and he/they speak well of me as a Landlord.

9. Another Tenant has rented from me for more than fourteen (14) years. Us Landlords are a good bunch of persons.

10. The "bad guys" are those politicians (half of our "Governance"), who came up with this bad law. The costs for invading the 30,000 to 35,000 rental homes in Prince George's County will be way up into the millions of dollars. Waste, tax and spend; Waste, Tax and Spend, WASTE, TAX AND SPEND is what they know how to do.

11. Assuming that His or Her Honor strikes-down that bad law, I promise to support that Decision. If our County Attorney (who has a cadre of good Attorneys at his command), if he should appeal to our Court of Special Appeals, I will be there. If our County Attorney should take an appeal to our "Supreme Court" — our Court of Appeals, I will be there. If our County Attorney should (unwisely) take an appeal to our United States Supreme Court, I will be there to support your wise Decision, at no charge to anyone (pro bono). This waste, tax and spend mindset of our politicians will be dealt a setback. I promise.

AGENDA ITEM SUMMARY

Prince George's

County Council

Reference No: CB-64-1993

Draft No: 2

Meeting Date: 9/7/93

Requester: D

Item Title: To amend the Landlord-Tenant regulations to require licensing of one- and two-family dwellings which are rented by the owner; and deleting certain obsolete language

Sponsors	D B
Date Presented	4/20/93
Committee Referral	(1) 4/20/93 HP&T
Committee Action	(1) 6/24/93 FAV(A)
Date Introduced	7/6/93
Pub. Hearing Date	(1) 7/27/93 1:30 PM
Council Action	(1) 9/7/93 Enacted
Council Votes	P_: A_, B_: A_, CA: N_, C_: A_, D_: A_, F_: A_, MC: N_, M_: N_, WI: N_
Pass/Fail	P
Executive Action	9/28/93 US
Effective Date	11/15/93
Remarks	_____

Drafter: Resource Personnel: Maurene Epps Webb

LEGISLATIVE HISTORY

HOUSING, PLANNING & TRANSPORTATION COM. REPORT DATE 6/24/1993

Committee Vote: Favorable as amended, 3-1 (In support: Council Members Casula, Del Giudice and Fletcher; opposed: Council Member Mills).

The sponsor proposed a number of amendments to the original draft of the legislation. First, he concurred with all of the recommendations transmitted by the Director of the Department of Environmental Resources on June 2, with one exception. Rather than an initiation date of October 31, 1993, as proposed by Mr. Lauer, it was recommended that December 31, 1993 be substituted. Also, it was recommended that the fee be set by the Council at $75 for a two-year license, and this fee may only be increased by Council Resolution. Finally, it was recommended that a number of exemptions apply. These exemptions should include rentals to immediate family members, landlords who are members of the armed service or diplomatic corps who maintain the property as their permanent residence, and landlords who have been relocated for employment or education, maintain the property as their permanent residence, and have not leased the property for more than two consecutive years. Following a lengthy discussion involving Committee members, representatives of the

Department of Environmental Resources, and citizens, these amendments were accepted by the majority of the Committee members.

HOUSING, PLANNING & TRANSPORTATION COM. REPORT DATE: 6/3/93

HELD in Committee.

The sponsor explained the need for this legislation, which will require the licensing of single-family rental facilities. These facilities are not currently licensed, and Department of Environmental Resources' staff inspects these units only when a complaint is received. he noted that in one week, twenty calls were received by the County regarding landlord-tenant issues. Inspections would be required every two years, and would be based on compliance with the County's Housing Code. Twelve municipalities currently license these facilities, and facilities located within these municipalities would be exempt from the County's licensing requirement.

The following comments were received: The Department of Environmental Resources supports the legislation, with the understanding that additional staffing would be required. It is estimated that twelve new staff members would be required, at a cost for the total program of approximately $575,000. The Department proposed a number of minor and clarifying amendments, and an amendment that would require existing facilities to comply prior to 1995, as proposed in the legislation. The Municipal Association supports the legislation, but requests that multifamily rental facilities located

within municipalities also be exempt from County requirements. Committee members requested that it be clarified that any exemption only apply to municipalities that inspect and license, not simply license. Mike Twigg, representing the Association of Realtors, suggested that rather than instituting this new process, property owners who are issued violations should be charge a fee. He also objected to the absence of specific regulations and exemptions. Laverne Williams and Mary Ward, of Lewisdale, support the legislation and described the problems associated with unregulated rental properties in their neighborhood.

The Committee discussed potential amendments regarding a number of issues. Exemptions were discussed for military and foreign service personnel, and other individuals who rent on short-term basis or have recently used the house as their primary residence. The two-year term of the license was questioned.

BACKGROUND INFORMATION/FISCAL IMPACT

(Includes reason for proposal, as well as any unique statutory requirements)

The proposed legislation would define "single-family rental facility" and provide for the licensing of such facilities. Additionally, the Director of the Department of Environmental Resources would be authorized to develop regulations for the licensing program. It is the intent of the Council that any revenues generated from the licensing program be spent on hiring the necessary personnel for the program and to provide

related Landlord-Tenant information, mediation and referral services.

CODE INDEX TOPICS:

Housing and Property Standards

Landlord-Tenant [Code] Regulations

Applicability of Article.....13-137

Definitions.....13-138

Rental Housing

[Fee, review of.....13-189]

Licenses

Application; existing or new premises.....13-182

Exemptions from licensing requirements.13-182.01

Required; standards.....13-181

[Transferability.....13-186]

Termination of license on change of ownership; procedures for a new license; penalties for failure to apply; term of license.....13-186

[Refunds.....13-189]

Schedule[s] of fees;refunds;review of fees...13-189

IN THE CIRCUIT COURT FOR

PRINCE GEORGE'S COUNTY, MARYLAND

HARRY E. THOMASON)
609 Cedar Avenue)
Fort Washington, Maryland 20744)
PLAINTIFF, pro se)
vs.)
PRINCE GEORGE'S COUNTY,)
MARYLAND)EQUITY NO. CAE 93-22747
DEFENDANT) Filed Dec 21 ~~1992~~ 1993
(Serve: the County Attorney)
Rm 5121 County Administration Bldg)
Upper Marlboro, Maryland 20772)

AMENDMENT of the COMPLAINT

1. Under my REMARKS in my original COMPLAINT, paragraph 5, line 1 there is a statement; "Those five bad Politicians already have legal recourse, to correct the situation when a Tenant is bad - - -." Please strike out the word "bad" in regard to Politicians. And, in paragraph 10., first line I referred to; "The "bad guys" are those politicians (half of our Governance"), who came up with this bad law." Please strike out the word "bad" with regard to "guys". (Some were/are not "guys", they are gals. Also, they have not been judged as "bad".)

2. But, look at what they did to the printed record and please add:

COUNT 5 — CONCEALMENT

1. The public is left without a full-disclosure by our COUNCIL. This BILL was strongly-opposed during public hearings. Notably the Prince George's County Association of Realtors vigorously and fluently opposed it. Also, the CITIZEN'S ACTION GROUP presented a strong opposition to the BILL and gave reasons WHY it would be badly-flawed, if passed. Former United States Congressman, John R. Foley spoke, and I presented specifics that supported the fact that it would become bad law.

2. By concealing, or not revealing those FACTS, in the printed record, our County COUNCIL is presenting us with a "sanitized" version of what really went on before they cast their votes. They presented an "AGENDA ITEM SUMMARY" which purports to give the "LEGISLATIVE HISTORY". But, it fails to set out the strong opposition to the BILL. That opposition was both; in writing and at the Public Hearing on July 27, 1993 at 1:30 P.M.

3. The one-sided presentation by our COUNCIL as the LEGISLATIVE HISTORY is not objective. It is not complete. The public is "fed" this "sanitized" version while our COUNCIL concealed from the record the true facts of the OPPOSITION.

4. We have truth in lending laws, and other "truth" laws to protect our citizens. Now the Honorable COURT is asked to decree that we must have truth for the record, and full-disclosure about this BILL.

5. In the future, Historians should be able to review the

complete record and see why this BILL was stricken-down by the Honorable Court. Politicians should be able to study this Case and learn what they must do in order to comply with the LAW. Judges should be able to read all of the background so they can be guided by the Prince George's County Circuit Court Judge who said to the Politicians, STOP TRAMPLING ON THE FEET OF THE CITIZENS.

COUNT 6 — LACK of EQUAL PROTECTION UNDER THE LAW

1. The United States of America Constitution, Article XIV, Section 1 provides that, quote: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (underlining added).

2. CB-64-1993 seeks to deny equal protection of the laws to citizens of Prince George's County. Specifically:

A. CB-64-1993 assumes that we need protection from renters who may tear up their homes, and thereby not have them up to Code, or Landlords who do not keep their rented houses up to Code. But, CB-64-1993 assumes that we do not need protection from other renters (such as in-laws of the Landlord, and several other classes of Tenants). That is an arbitrary assumption.

B. There is no rational basis for assuming that some renter's homes are up to Code and that others are not up to Code. An in-law of a Landlord, or others, are exempted

from CB-64-1993. Thus, CB-64-1993 fails to give EQUAL PROTECTION of the LAWS (with regard to Tenants and Landlords), as required by the Constitution of the United States of America.

COUNT 7 — LACK of DUE PROCESS OF LAW

1. CB-64-1993 would deprive Citizens (Tenants and Landlords), of their liberty without due process of law. CB-64-1993 would deprive Landlords of their rights to not have their rental house(s) invaded by an Inspector who has no probable cause to suspect there is a violation of the Code. Tenants have a right to be free of searches of their homes. Inspectors who would come into their homes to search for Code violations would be invading their privacy — (it has been said that a man's home is his castle). Tenants would be deprived of their liberty to do as they please during that period while the Inspector would be in the home looking for some unspecified something.

2. At present, an Inspector cannot go into the garage to search for a vehicle without a tag, or an antique vehicle, or an engine or other articles stored away, or to see whether someone is changing his brake pads or starter or oil or antifreeze, whether the activity or articles belong to the Tenant or to the Owner of the premises. CB-64-1993 would allow an Inspector to go inside of the owner's closed-in premises, and the Tenant's private home, even into the bathroom and bedrooms, without a warrant issued by a Judge.

3. Prior to CB-64-1993, an Inspector cannot enter into a

home unless invited in. At present, a Judge will tell an Inspector when he can invade the privacy of a home or a garage of a Tenant. The Judge issues a Search Warrant if the Inspector can show probable cause that something unlawful is going on, or is probably going on in that home or garage.

4. But, CB-64-1993 would strip away that protection that Tenants and property owners of Prince George's County have under the Constitution of the United States of America (quoted in Count 6 above). There would no longer be DUE PROCESS OF LAW.

5. Stated another way, if not stricken-down, CB-64-1993 will take away the power of the Judiciary (Judge/Courts), to administer the law(s). The Judge will no longer be consulted as to probable cause before a search warrant is issued and a search is conducted in the home or garage. The Tenant's rights to privacy in their own homes will no longer be protected by the Court, and our Judicial process. That encroachment on the powers of the Judiciary must be stricken-down. No, no search without probable cause! No search without a search warrant. No search without consent of the Judiciary.

TEMPORARY INJUNCTION

1. I will get the citation and specifics as to the Decision against Defendant by Judge McCullough, including his Temporary injunction against Defendant, prior to the hearing in this case.

2. Plaintiff hereby asks the Court to issue a Temporary

Injunction to prohibit the Defendant from enforcing CB-64-1993 until a full hearing can be held in Court on the merits of this case.

REMARKS

1. I believe this case should follow the lead established when Prince George's County Circuit Court Judge William H. McCullough ruled against P.G. County officials. In that case, according to the attached newspaper account of December 8, nine (9) charities, including seven (7) volunteer fire departments, and the Crescent City Jaycees Foundation, and the Marlboro Boys and Girls Club, has handed our County its third legal defeat in their battle.

2. Our Court of Special Appeals at Annapolis forbade our County officials from collecting licensing and application fees from those charitable organizations. Judge McCullough, on November 23, issued an injunction which prevented County officials from collecting the fees. And, McCullough's ruling also blocked Prince George's County officials from requiring affidavits to the Sheriff in regard to non-paid volunteers.

3. That case has some things in common with CB-64-1993, namely BAD LAW; an effort to increase WASTE (to hire more Inspectors); an effort to collect MORE TAXES (Licensing and Application fees); greater SCRUTINY of honest, law-abiding citizens; (Affidavits before getting Licenses); more Government to WASTE, TAX and SPEND, etc.

SUMMARY: My honest opinion is that the Court should strike down CB-64-1993. The MENU of reasons WHY it should be

stricken down, set out in my original Complaint, is hereby expanded. His Honor, or Her Honor may choose one reason, or half-a-dozen reasons off the MENU. Legally the Court could use several, or all of the reasons set out in my original Complaint, and this Amendment to the Complaint. As in the above-mentioned case, a temporary injunction should be issued in this case.

Respectfully submitted HARRY E. THOMASON, pro se.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Amendment to the Complaint was hand-carried to the Office of the County Attorney, Room 5121, County Administration Building, Upper Marlboro, Maryland 20772 on this date, December 21, 1993.

_____

HARRY E. THOMASON, pro se

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

THOMASON,

Plaintiff

vs.

CAE 93-22747

PRINCE GEORGE'S COUNTY,
MARYLAND

Defendant

_____/

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Motions)

Upper Marlboro, Maryland

Friday, April 29, 1994

BEFORE:

HONORABLE DARLENE G. PERRY, Associate Judge

APPEARANCES:

For the Plaintiff:

MR. THOMASON, pro se

For the Defendant:

ALAN E. D'APPOLITO, ESQ.

MARY KAY SHULTZ
Official Court Reporter
P.O. Box 401
Upper Marlboro, Maryland 20773

PROCEEDINGS

THE COURT: Thomason vs. Prince George's County Maryland, CAE 93-22747.

MR. D'APPOLITO: We're the Movant. I think our motion is self-explanatory. May I submit and reserve the right to argue in rebuttal?

THE COURT: Mr. Thomason.

MR. THOMASON: I believe I would like to submit the case on record, and if Your Honor has not had an opportunity to review it, I do have a brief summary of the case I'd like to hand to Mr. D'Appolito to have a copy, and would you, per chance, have a copy?

THE COURT: I have had a chance to review it. I will look at your summary.

MR. THOMASON: Thank you, ma'am.

I'm here on behalf of tenants of Prince George's County and property owners in both cases. I feel that this law is just unconstitutional, patently so, invasion of private houses, going in for searches without the judiciary, without the judges reserving themselves the right to determine whether there should be invasion of property for searches and saying if you have an oral lease you're exempted. If you're kin to somebody, you're exempted.

Many different examples. Comes down to the question if you live in Prince George's County yourself, Your Honor, you're not really covered by this law. I presume that you're not.

But anyway, since you have come to the honor of

having reviewed the case, I would say that to dismiss this case out of hand would just be almost unconscionable.

Now, in addition to that, I have – just yesterday I came across some relevant material. There is a man in the courtroom today who has learned from his tenant that they are not going to allow and respect the invasion of privacy to inspect the home unless Your Honor or some other judge says there is probable cause. They paid their $75 up front under protest, but this stage, they decided they're going to make the stand.

And, in addition to that, I have a tenant, Metropolitan policeman, told me the same thing. He's a gun-toting policeman, and he said no inspector is going to come to my home and search unless the judge has reviewed the situation and has given probable cause.

And I have another tenant who is a detective for the State of Maryland who indicates the same thing.

So, no, I think there is – I have been very quiet about this case. I have sought no publicity about it, and I decided to wait and see, wait about four months now, and finally get my day in court to say a few words to Your Honor, but I believe it would be unconscionable to dismiss this case without going on for a hearing or a trial and through the judicial process.

A similar case, Donald Kirsh, who just a couple years ago went through the same process, went up from the Court, Prince George's County Circuit Court, to the Court of Special Appeals, and both agreed that the defendants had no case.

Then it was taken by the Court of Appeals, and it was held in similar circumstances that you have two classes of citizens treated unequally and taxed unequally and so forth.

THE COURT: What do you believe are the two groups or more which are not being treated fairly in this case, in your situation?

MR. THOMASON: First of all, it said that the tenant who rents from me, as they often do, under oral lease, they're not covered by this.

Now, if this law is supposed to be good, then they're not protected.

Now, later we usually do have a written lease, but at that stage, then this law would say, well, they're not covered except to me, and it's up to me and the tenant to decide when they will be covered. Because if we have an oral lease, they can come before the landlord in Tenant Court and try to persuade the judge, if I'm the plaintiff, defendant, same way, I realize an oral lease is not best. But they are not covered.

And these are single-family homes, single-family houses, and the discrimination seems to me to be self-evident that you're discriminating in favor of some and against others, a tax which is not really a tax, and I don't believe law-makers examined whether it's a tax or whether it's not a tax. That's all covered in the case.

But, not to belabor the point any more, I feel there is discrimination to favor some and disfavor others, both landlords and tenants are property owners.

So I rest my case, Your Honor.

THE COURT: All right. Mr. D'Appolito, do you want to respond?

MR. D'APPOLITO: Just briefly. I think that the issue of the illegal search is a non-issue, that no one's home is going to be broken into to perform one of these searches.

Obviously, under some circumstances, it may be necessary for the Building Inspection Division to seek an administrative search, but no doors are going to get kicked down under this law.

And the other thing is the exceptions to the law provide for instances where a short-term rental is contemplated, certainly no longer than a two-year period, whereby the inspections take place.

So I think the exceptions are very reasonable, unlike the Kirsh case, where the --

THE COURT: The Court's familiar with the Kirsh case.

MR. D'APPOLITO: I won't say anything more. Thank you.

THE COURT: Anything else, Mr. Thomason?

MR. THOMASON: No, ma'am. I would emphasize, once again, that it's unequal treatment under the law. Fourteenth Amendment prohibits that.

The tenants should not have to pay extra rent to cover $75 every two years because the landlord has to pay it into the County Government. Thank you.

THE COURT: All right. First, we need to remember that laws are presumed to be constitutional, and the Court is

bound by that.

The court has read this statute, and, in fact, have paid my $75, and I'm very familiar with the exceptions and the provisions under it. It's well within the broad police powers of Government to do that, and the Court finds that the statute is constitutional, the ordinance is constitutional, and, accordingly, grants the Defendant's motion to dismiss.

(Proceedings concluded.)

IN THE CIRCUIT COURT FOR

PRINCE GEORGE'S COUNTY, MARYLAND

HARRY E. THOMASON)

PLAINTIFF,)

v.)

PRINCE GEORGE'S COUNTY,)

MARYLAND)CASE # CAE 92-22747

DEFENDANT)

PLAINTIFF'S REQUEST UNDER RULE 2-522 (a) FOR COURT'S STATEMENT OF REASONS FOR THE DECISION

To the Honorable DARLENE G. PERRY, Judge of said Court: Comes now Plaintiff HARRY E. THOMASON, pro se, and under RULE 2-522 (a) request the Court to "file in the action a brief statement of the reasons for the decision" of the Court in granting Defendant's motion to dismiss. The grounds in support of this request are:

1. On April 29, 1994, the Court entered judgment against the Plaintiff by granting Defendant's Motion To Dismiss.

2. The Court did not state the "reasons for the decision."

3. Plaintiff contemplates filing a timely appeal to the Court of Special Appeals from the Court's April 29, 1994 decision.

4. Plaintiff believes and therefore asserts that it would be helpful to the intermediate appellate court panel to know the reasons for this court's decision of April 29, 1994.

WHEREFORE, the premises considered, the Court is urged:

a. To file a written statement under RULE 2-

522(a) of the Court's reasons for entering judgment on April 29, 1994 dismissing Plaintiff's complaint, and

b. To render such other and further relief that the Court in its discretion deems just and proper.

HARRY E. THOMASON, Pro se

POINTS AND AUTHORITIES

The docket entries in this clause.

RULE 2-522(a), Maryland Rules of Civil Procedure.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this pleading was sent by first class mail, postage prepaid to: MR. ALAN E. D'APPOLITO, ESQ., Room 5121, County Administration Bldg., Upper Marlboro, MD 20772, Attorney for Defendant, on this 5th day of May, 1994.

HARRY E. THOMASON

No. 1041, September Term, 1994

Harry E. Thomason

v.

Prince George's County, Maryland

Attorneys for Appellant: THOMASON, HARRY E.

Attorneys for Appellee: WHALEN ESQ., MICHAEL P.

D'APPOLITO ESQ., ALAN E.

The Record in the captioned appeal was received & docketed on 8/24/94.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before 10/03/94. (Rule 8-502 (a) (1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after the filing of appellant brief (Rule 8-502 (a) (2)).

This appeal has been set for argument before this Court during the week of February 6, 7, 8, 9, 10, 13, 14, 15, and 16, 1995.

IF, DUE TO A CURRENTLY SCHEDULED COURT APPEARANCE OR OTHER EXTRAORDINARY CAUSE, YOU WILL BE UNABLE TO APPEAR ON ONE OR MORE OF THESE DATES, YOU MUST INFORM THE CLERK WITHIN TEN DAYS AFTER THE DATE OF THIS NOTICE. OTHERWISE, THE DATE SELECTED FOR ARGUMENT WILL NOT BE CHANGED.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument

(Rule 8-502(b)).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 8-523) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of the Court

LESLIE D. GRADET
CLERK OF THE COURT
OF SPECIAL APPEALS

IN THE CIRCUIT COURT FOR

PRINCE GEORGE'S COUNTY, MARYLAND

HARRY E. THOMASON	)
609 Cedar Avenue	)
Fort Washington, Maryland 20744	)
PLAINTIFF, pro se	)
vs.	)
PRINCE GEORGE'S COUNTY,	)
MARYLAND	)EQUITY NO. CAE 93-22747
DEFENDANT	) Filed Feb 1, 1994
(Serve: the County Attorney	)
Rm 5121 County Administration Bldg)	
Upper Marlboro, Maryland 20772	)

ORDER

Upon consideration of Plaintiff's MOTION for Temporary/Interlocutory Injunction, and Plaintiff's AFFIDAVIT in support thereof, and Plaintiff's MOTION for Final Injunction and Declaratory/Summary Judgement filed in support of said Temporary/Interlocutory Injunction to enjoin the Prince George's County, Maryland Government from enforcing Prince George's County Bill CB-64-1993, known as the law requiring inspection and licensing of some, but not all single-family rental houses (as well as some, but not all, two-family and three-family rental houses), it is this _____ day of _____, 1994, by the Circuit Court for Prince George's County, Maryland

ORDERED, that Plaintiff's MOTION for

Temporary/Interlocutory Injunction is hereby GRANTED; and it is further

ORDERED, that the Prince George's County Government is enjoined from enforcing CB-64-1993 until a final determination is made as to the validity of that Ordinance; and it is further

ORDERED, that pursuant to Maryland Rule BB 75 (b) (I), that this Court is exercising its discretion and dispensing with the requirement of a bond or other security in granting the MOTION for Temporary/Interlocutory Injunction.

JUDGE, CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY

2/25/94 Denied

Verbally ordered County Attorney that Mr. Thomason's property, personal and rental, be exempt from CB-64-1993 pending this lawsuit.

/s/ Jacob S. Levin

IN THE CIRCUIT COURT FOR

PRINCE GEORGE'S COUNTY, MARYLAND

HARRY E. THOMASON	)
PLAINTIFF, pro se	)
v.	)CASE #CAE 92-22747
PRINCE GEORGE'S COUNTY,	) Feb. 28, 1994
MARYLAND	)
DEFENDANT	)

REPORT TO THE COURT

1. In the Judge's Chambers, Friday, February 25, 1994, I was instructed, by the Honorable Judge Jacob Levin, to Provide Counsel for Defendant with identification of the properties which I rent out to Tenants. They are as follows:

1. 6401 Walker Mill Road, Capitol Heights, Maryland 20743;
2. 6403 " " " , " " , " " ;
3. 6405 " " " , " " , " " ;
4. 6407 " " " , " " , " " ;
5. 6409 " " " , " " , " " ;
6. 6411 " " " , " " , " " ;
7. 6803 " " " , " " , " " ;
8. 6802 " " " , " " , " " ;
9. 620 Hedgeleaf Avenue, Capitol Heights, Maryland 20743;
10. 407 Carmody Hills Dr., Capitol Heights, Maryland 20743;
11. 409 Carmody Hills Dr., Capitol Heights, Maryland 20743;
12. 619 Goldleaf Avenue, Capitol Heights, Maryland 20743;
13. 6621 Seat Pleasant Dr., Capitol Heights, Maryland 20743;
14. 622 Hedgeleaf Avenue, Capitol Heights, Maryland 20743;

2. Defendant, through its Counsel, Alan E. D'Appolito, Esq., was instructed to not levy any fines or penalties against me or these properties.

3. Defendant's second MOTION to Dismiss my case will be heard in due course, at an early date.

4. I was not aware of Defendant's MOTION FOR RECONSIDERATION/REQUEST FOR HEARING at the time of our appearance in Judge Levin's chambers. (A copy was mailed to me February 24 and I received it Saturday, February 26, 1994.) In Chambers, I agreed that a hearing should be granted.

HARRY E. THOMASON, Plaintiff, pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Report to the Court was hand-carried to the Office of the County Attorney, Room 5121, County Administration Building, Upper Marlboro, Maryland 20772 on this date, February 28, 1994, and a copy was mailed, First Class, postage prepaid, to : Maryland Attorney General, 200 St. Paul Place, Baltimore, Maryland 21202.

HARRY E. THOMASON, Plaintiff, pro se

Supreme Court, U.S.
FILED
APR 12 1996
CLERK

No. 95-1463

In The

Supreme Court of the United States

October Term, 1995

HARRY E. THOMASON, ESQ.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Respondent.

On Petition for Writ of Certiorari to the
Court of Special Appeals of Maryland

RESPONDENT'S BRIEF IN OPPOSITION

JAY H. CREECH
Principal Associate County Attorney
Counsel of Record
MAURENE EPPS WEBB
Acting Deputy County Attorney
Room 5121, County Administration Building
Upper Marlboro, Maryland 20772
(301) 952-5239
Counsel for Respondents

11 pp

QUESTIONS PRESENTED

1. Whether the Maryland Court of Appeals erred in failing to grant certiorari and remand the cause for trial on the issues of discriminatory denial of the guarantees of the United States Constitution of equal protection of the laws and unlawful administrative search in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

2. Whether the ordinance adopted by Prince George's County, Maryland (CB-64-1993) violates the safeguards of the Fourth and Fourteenth Amendments to the Constitution of the United States.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Case	2
Reasons for Denying of the Writ	3
Conclusion	7

TABLE OF AUTHORITIES

	Page
Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727 (1967)	3,4,5
Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971)	6
National Labor Relations Board v. Pittsburg S.S. Co., 340 U.S. 498, 71 S.Ct. 453 (1951)	6,7
Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 75 S.Ct. 614 (1955)	7
See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737, (1967).	3,4,5

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

No. 95-1463

HARRY E. THOMASON, ESQ.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Respondent.

On Petition for Writ of Certiorari to the
Court of Special Appeals of Maryland

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On September 7, 1993, the Prince George's County Council, sitting as the District Council enacted Council Bill 64-1993 ("CB-64-1993"). CB-64-1993 required those who rent or lease single family homes to first obtain a license from the Prince George's County Department of Environmental Resources.

On December 17, 1993, the Petitioner filed a Complaint in the Circuit Court for Prince George's County, Maryland, alleging that CB-64-1993 violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. This Complaint was later amended to allege violations of the Fourth Amendment of the United States Constitution's ban on unlawful searches. Respondent, Prince George's County, Maryland, (the "County") filed a motion to dismiss asserting Petitioner's failure to show the absence of a rational basis for the legislation. The motion was ultimately granted.

The circuit court's decision was appealed to the Maryland Court of Special Appeals, which issued an unreported opinion affirming the grant of the motion to dismiss. The Maryland Court of Appeals denied a request for a writ of certiorari finding "no showing that review by certiorari is desirable and in the public interest." (Apx.-1)

REASONS FOR DENYING THE WRIT

1. The provisions of CB-64-1994 are in harmony with the decisions of this Court.

Although the Petitioner boldly asserts that CB-64-1993 is invalid because it discriminates against some citizens, and results in an invasion of privacy, concealment, lack of equal protection under the

law, and lack of due process of law (Petition pp 9-10), the essence of his argument is that CB-64-1993 is violative of the Fourth Amendment's prohibition against unreasonable searches and seizures, and therefore conflicts with this Court's holdings in Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727 (1967), and See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737 (1967).[1] This contention is without merit.

In Camara, this Court reviewed the legality of a housing code ordinance which imposed a criminal penalty for refusing a warrantless inspection of one's residence. The challenged law was found to be violative of the Fourth Amendment's prohibition against unreasonable searches for the following reason:

---

[1]Moreover, the only constitutional provision set forth in the Petition is the Fourteenth Amendment of the United States Constitution. Thus, this Court should conclude, pursuant to Supreme Court Rule 14, that this is the only provision at issue.

> [O]nly by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk . . ., he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field . . . . [S]uch searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual . . . .

Id. at 532, 534, 87 S.Ct. at 1733. However, this Court did not find periodic inspections for compliance with minimum code standards to be an illegal exercise of the police power. *Id.* at 535-540, 87 S.Ct. at 1734-1736. Moreover, it was noted that "most citizens allow inspections of their property without a warrant . . . and it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry." *Id.* at 539-540; 87 S.Ct. at 1736. In See v. City of Seattle, 387 U.S. 541, 544, 87 S.Ct. 1737, 1740 (1967), this Court similarly ruled that a city may not enact an ordinance which allows warrantless entries upon commercial premises to ascertain compliance with fire code provisions. However, once again, the right to inspect and license such premises

was upheld. *Id.* at 545-546, 87 S.Ct. 1740-1741.

Clearly, the challenged legislation meets the legal mandates set forth in Camara and See. By its express terms, CB-64-1993 only requires those who lease or rent single-family dwellings to first obtain a license. No license is granted until the premises meet the minimum standards of the Code. (Apx.-16.) Nothing in the law suggests that unauthorized entries to ascertain code compliance will be permitted. Indeed, in a hearing before the circuit court for Prince George's County, Maryland, the County reiterated that it would seek an administrative warrant if entry was not voluntarily granted. (Apx.-43.)

Petitioner does not, and cannot, assert that CB-64-1993 is not a valid exercise of the County's police power. Given this validity and the absence of any support for his contention that the legislation allows a warrantless entry upon private property, the Petition for Certiorari should be denied.

2. The provisions of CB-64-1994 are not violative of the Equal Protection Clause.

As further support for his Petition, Mr. Thomason asserts that CB-64-1993 is unconstitutional because it violates the equal protection

clause of the Fourteenth Amendment of the United States Constititution. As noted by the Maryland Court of Special Appeals, Petitioner does not allege that CB-64-1993 "burdens a 'suspect class' or impinges on a 'fundamental right'". (Apx-6.) Accordingly, the law need not be subjected to close judicial scrutiny, or heightened scrutiny, but may be evaluated under the rational basis test. *See*, Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971).

Under a rational basis analysis, the challenged legislation is not violative of the equal protection clause. The law furthers the legitimate governmental purpose of ensuring that all residential rental properties, single as well as multi-family dwellings, adhere to County safety standards. All landlords who rent or lease single family residences commercially are treated equally.[2] Accordingly, Petitioner should not be granted a Writ of Certiorari on these grounds.

3. There is no important public issue raised in the Petition.

Pursuant to Supreme Court Rule 10, "[a] petition for writ of certiorari will be granted only when there are special and important reasons therefor." *See, also* National Labor Relations Board v.

---

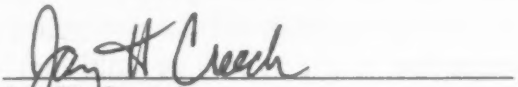
[2]Exceptions noted within CB-64-1993 include the exclusion of inspections for single-family dwellings located within incorporated municipalities as a result of a similar procedure currently in place within these areas, as well as intrafamilial and short term rentals.

Pittsburgh S.S. Co., 340 U.S. 498, 71 S.Ct. 453 (1951); Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 75 S.Ct. 614 (1955). The instant Petition is merely a recapitulation of why Petitioner believes his position to be correct and does not set forth any special or important bases for this Court to issue the Writ.

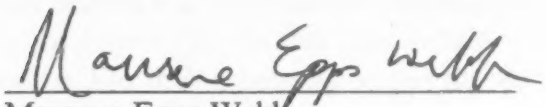
CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



Jay H. Creech
Principal Associate County Attorney
Counsel of Record



Maurene Epps Webb
Acting Deputy County Attorney